

1 Q That was actually something you
2 relied on counsel to do for you, correct?

3 A No. Now I know what you're
4 referring to. Originally, I relied on counsel
5 for that. I asked them to get me lots of
6 different information. I drove them crazy
7 with my requests. And they were pretty
8 diligent about getting back to me.

9 However, subsequent to my
10 deposition, I then spoke to the programming
11 management at Golf Channel, and I spoke to the
12 programming management at Versus, and I went
13 back through my questions and verified that my
14 understandings were correct.

15 Q Who did you speak to?

16 A At Golf Channel I spoke to Chris
17 Murvin, and at Versus I spoke to -- I hope I
18 get these names right -- Mark Feinberg and
19 Jeff Goldberg, I believe, who are Director and
20 VP of Programming, respectively.

21 Q Are you aware that there is
22 actually study data indicating that when you

1 put things -- sports or content on the
2 internet it can actually have an additive
3 effect in the sense that it makes people more
4 interested in watching it on television?

5 A No.

6 Q You have never seen that kind of
7 data?

8 A Not that I recall.

9 Q Have you seen any contrary data
10 indicating that it actually reduces interest
11 in the television content if it's also
12 available on the internet -- the study data?

13 A I think common sense would tell
14 you that it might, but I haven't seen any
15 data.

16 Q Okay. You talked about
17 programming expenditures. You don't know
18 whether Comcast considered Tennis Channel's
19 programming expenses when it looked at Tennis
20 Channel in 2009?

21 A I don't know.

22 Q You have never seen a metric in

1 the cable industry of licensing fee per
2 programming expenditure?

3 A Is this the metric that Mr. -- Dr.
4 Singer had in his --

5 Q No, this is a different metric.
6 I'm going to ask you about that one in a
7 minute.

8 A Oh, okay. So I want to make sure
9 I get this right. So tell me what this metric
10 is, then.

11 Q This is a metric called license
12 fee for programming expenditure, something we
13 asked about in your deposition.

14 A I got you now, yes. No, I have
15 not seen that.

16 Q Okay. The one you, I believe,
17 take issue with with Dr. Singer is the price
18 per rating point metric.

19 A Correct.

20 Q And you say you have never seen
21 that metric. Are you surprised to hear that
22 Comcast has used that metric?

1 A What I said --

2 MR. TOSCANO: I'm going to object
3 to that question. It misstates his testimony
4 and his written testimony.

5 JUDGE SIPPEL: He said Comcast.
6 He didn't say -- restate --

7 MR. SCHMIDT: Sure.

8 JUDGE SIPPEL: I mean, we're going
9 to try again.

10 MR. SCHMIDT: I'd be happy to.

11 JUDGE SIPPEL: I'm reserving my
12 ruling, but I want to hear it again.

13 MR. SCHMIDT: I'm shorthanding to
14 try to get us through. I apologize.

15 BY MR. SCHMIDT:

16 Q On page 16 of your report, you
17 take issue with Dr. Singer's license fee per
18 rating point metric, correct?

19 A Correct.

20 Q And you say you have never heard
21 of that metric in the industry.

22 A Here is what I say. It is not a

1 multi-channel distributor standard. In my
2 years of experience in the business, I don't
3 recall having seen an MVPD consider a formula
4 of a network's license fees divided by the
5 average Nielsen rating of that network in
6 making a carriage decision.

7 Q Okay. Have you ever come across
8 that metric -- license fee per --

9 A Not until I became involved in
10 this proceeding. I don't -- to the best of my
11 knowledge, I don't recall it.

12 Q Okay. Did you see any internal
13 Comcast documents?

14 A I don't think I did.

15 MR. SCHMIDT: May I approach, Your
16 Honor?

17 JUDGE SIPPEL: You may.

18 THE WITNESS: Thank you.

19 MR. SCHMIDT: You're welcome.

20 JUDGE SIPPEL: Thank you.

21 MR. SCHMIDT: You're welcome.

22 BY MR. SCHMIDT:

1 Q This is Tennis Channel Exhibit 42,
2 and I'm just going to ask you --

3 JUDGE SIPPEL: 42 or 82?

4 MR. SCHMIDT: 82. Thank you, Your
5 Honor.

6 (Whereupon, the above-referred to
7 document was marked as Tennis
8 Channel Exhibit No. 82 for
9 identification.)

10 Hunger is getting to my brain.

11 JUDGE SIPPEL: Well, it's about
12 time.

13 (Laughter.)

14 BY MR. SCHMIDT:

15 Q Do you have that there in front of
16 you?

17 A I do.

18 Q Okay.

19 A It's a lot of pages.

20 Q This is an internal Comcast
21 document, and I want to direct your attention
22 to the third page of it.

1 A Okay.

2 Q If you look at the bottom it says
3 "fairly priced." Do you see that?

4 A No. On the bottom of page 1 it
5 says "fairly priced"?

6 Q No. I'm sorry. On the bottom of
7 page 3.

8 A Oh.

9 Q And just while you're doing that
10 --

11 A Oh, I do see "fairly priced."

12 Q -- the subject of this document is
13 DirecTV discussion information, and it relates
14 to Versus.

15 JUDGE SIPPEL: The Bates Number on
16 that would be 948.

17 MR. SCHMIDT: Correct, Your Honor.

18 BY MR. SCHMIDT:

19 Q They make the statement, "ESPN2 is
20 [REDACTED] internal research, [REDACTED] Kagan. Versus
21 is [REDACTED] rating, so we take
22 [REDACTED] pricing." So this is Versus

1 comparing their price and their ratings to
2 ESPN based on their price and their ratings,
3 correct?

4 A Correct.

5 Q If we flip the page, at the end of
6 the bullets on the other page Versus says,
7 "Cost prime rating point is in line and more
8 efficient with competitive sports networks."
9 Do you see that?

10 A I do.

11 Q So this is Versus using this cost
12 prime rating point analysis that Dr. Singer
13 used?

14 A That's correct.

15 Q And one of the competitive sports
16 networks identified is Tennis Channel,
17 correct?

18 A Correct.

19 Q Had you seen this document before
20 when you gave your testimony?

21 A I hadn't, and I'll point out to
22 you that it's not relevant to me. This is a

1 programmer's document. This is coming from
 2 Versus, a programming network, and not from
 3 Comcast Cable. It is not speaking to a
 4 carriage decision being made by Comcast Cable.
 5 So it's just simply not in my scope of work.

6 Q Is it relevant to you that this is
 7 Versus describing themselves as a competitive
 8 sports network with Tennis Channel?

9 A Is it relevant to me?

10 Q Yes. Is it relevant to you that
 11 this is Versus doing so in the context of them
 12 talking about their outreach to DirecTV
 13 regarding carriage?

14 A It's not relevant to me. This is
 15 a programming network speaking. This is not
 16 the Cable Division speaking. I still don't
 17 see an MVPD making carriage decisions based on
 18 this metric.

19 Q And it doesn't impact your opinion
 20 if that's how Versus is trying to get carriage
 21 from an MVPD?

22 A No.

1 MR. SCHMIDT: Your Honor, I have
2 about two lines of questions left. I suspect
3 it will be about 20 minutes. But then I
4 suspect we may get Enforcement Bureau
5 questions and redirect.

6 MR. CARROLL: You're not going to
7 tell us we spent all this time and we're not
8 going to finish before lunch?

9 MR. SCHMIDT: I asked to break at
10 lunch. I'm accommodating your witness. I'm
11 happy to keep going, Your Honor. I just want
12 to be clear about where I am. I have been
13 trying to cut -- I've, frankly, cut quite a
14 bit to try to get us to this point.

15 JUDGE SIPPEL: Well, as far as I
16 know, the witness wants to keep going until
17 he's finished. I mean, you can break. You
18 have a whole team there. You can rotate for
19 lunch or --

20 MR. CARROLL: I'd just reiterate
21 --

22 JUDGE SIPPEL: You're right.

1 MR. CARROLL: -- has made the
2 point a few times, reviewing documents with a
3 witness, just because he's an expert, that
4 don't have anything to do with the expert's
5 work, and they know it has nothing to do with
6 the expert's work, it's not clear that that is
7 very valuable time spent here.

8 I've got Mr. Bond waiting to
9 testify, I've got the real fact witnesses
10 lined up here, and we're all sitting doing
11 this, and this is my stomach grumbling on the
12 record, Your Honor.

13 JUDGE SIPPEL: Well, he's right.
14 He's right about that, though. I mean, that's
15 true. We have been spending so much time
16 showing this witness documents that he doesn't
17 know anything about, and he has no reason to
18 know anything about, and then we get into an
19 argument as to whether or not it's relevant to
20 this, that, or the other thing.

21 MR. SCHMIDT: I'm, frankly,
22 surprised that the witness has never been

1 shown these documents.

2 JUDGE SIPPEL: Well, maybe you
3 are, but that doesn't make it --

4 MR. SCHMIDT: Well, that's fine.

5 JUDGE SIPPEL: -- it's not going
6 to change the circumstances.

7 MR. SCHMIDT: No, that's fine.
8 I'm entitled to ask him if --

9 JUDGE SIPPEL: Yes, you are. You
10 can quickly ask him, "Have you seen the
11 document?" and he says, "No." Okay. Then,
12 fine, you can make your point for the record.
13 But to go into all of this --

14 MR. SCHMIDT: Understood.

15 JUDGE SIPPEL: -- I mean, I'm not
16 -- I really not upset about it, but I'm just
17 saying that he is making a good point, and
18 there are other witnesses in the -- you know,
19 they are just chomping at the bit, eager to
20 get in here. Okay? All right. Let's keep
21 going. Please.

22 BY MR. SCHMIDT:

1 Q Let's talk about demographics.
2 Demographics -- have you come to a conclusion
3 that Tennis Channel viewers are in a lower
4 income bracket than Golf and Versus?

5 A Based on the evidence that I have
6 seen, I would have to say I'm uncertain on
7 that metric. The MRI data suggests that they
8 are more affluent. The Simmons Experian data
9 pretty consistently says that the Tennis
10 Channel subscribers are of a lower income
11 level.

12 It seems to track year to year,
13 so, you know, I would lean towards the side of
14 saying Tennis Channel viewers. I'm not
15 talking about all tennis players or tennis on
16 broadcast television, but Tennis Channel does
17 seem to be a lower -- a lesser demographic, a
18 less affluent demographic.

19 Q Let's go through that very
20 quickly. The MRI data suggests that it is a
21 more affluent demographic up to the present
22 date, correct?

1 A More affluent than the Simmons
2 Experian data, is that --

3 Q More affluent than the average
4 network, and in light with Versus and Golf.

5 A That's correct.

6 Q And the Simmons 2007 data suggests
7 that it's a more affluent network comparable
8 to Golf and Versus, correct?

9 A Well, the Simmons 2007 data seems
10 to be relegated to --

11 Q Can you answer my question yes or
12 no? I'm really trying to get us out of here.
13 Does the 2007 --

14 A Well, you said that an hour ago,
15 so --

16 JUDGE SIPPEL: The witness has to
17 be --

18 MR. SCHMIDT: Well, I'm doing my
19 best, sir.

20 THE WITNESS: So I would say that
21 the Simmons 2007 data -- I don't have it in
22 front of me, so I can't really -- I don't

1 remember what it said. If you'd like to tell
2 me what it said, I will answer your question.

3 BY MR. SCHMIDT:

4 Q It showed a median household
5 income of [REDACTED].

6 A Okay. And that was in what year?

7 Q That's in 2007.

8 A Okay. So, you know, I'm trying to
9 discern what is the median household income of
10 Tennis Channel in 2009, 2010. 2007 study
11 isn't doing anything for me.

12 Q My question is -- okay. So you
13 put that to the side.

14 A Correct.

15 Q Do you know how many people were
16 covered by the 2010 study you looked at?
17 Which is the only one, as I understand it,
18 that suggests Tennis Channel has a lower
19 demographic?

20 A Do I remember that -- how many
21 people? There's thousands of people in the
22 Simmons Experian tracking study.

1 Q Let me show you one document on
2 this and then we'll move on. Did you look at
3 the actual Simmons data?

4 A I looked at some of it, yes.

5 Q Including the 2010 Simmons data?

6 A Yes.

7 MR. SCHMIDT: This is, I believe,
8 not yet in evidence, is that right? It is?
9 Comcast 195.

10 JUDGE SIPPEL: Comcast Exhibit
11 195.

12 MR. SCHMIDT: And this one is
13 going to be tricky because of the format.

14 JUDGE SIPPEL: Well, that gives us
15 some comfort. Okay. This is already in
16 evidence.

17 MR. SCHMIDT: Already in evidence.

18 JUDGE SIPPEL: As Comcast 195.

19 BY MR. SCHMIDT:

20 Q Okay. If you look at the second
21 page of the document, do you see that it has
22 the sample size? Mine is double-sided. Yours

1 might be as well.

2 A I believe --

3 Q The back of the front page.

4 A Oh, the back of the front page.

5 Q Yes.

6 A Okay.

7 Q And do you see that the sample
8 size for Tennis Channel in this survey is not
9 several thousand, but it's 386?

10 A I do, yes.

11 Q And that's the only data you have
12 supporting your view that Tennis Channel might
13 have a lower income demographic?

14 A Well, no. First of all, I don't
15 know that 386 is not a sufficient sample size,
16 so I'm not -- I'm not going to agree with your
17 implication that it's not, that it's too
18 small.

19 Secondly, my understanding from
20 reading the deposition of one of your
21 witnesses is that there was a Simmons study
22 acquired by Tennis Channel in 2009 that showed

1 a lower household income than the company
2 wanted, so suddenly Simmons became the poor
3 offerant and was no longer to be used in
4 substantiating household income.

5 MR. SCHMIDT: I'll move to strike
6 that answer as non-responsive.

7 BY MR. SCHMIDT:

8 Q And let me ask my question again.
9 My question is: this shows, in both 2009 and
10 2010, that that data set is based on [REDACTED]
11 people, correct?

12 A It shows --

13 Q Is that --

14 A What I'm looking at shows --

15 Q It's a yes or no question.

16 A -- me that in summer 2010, which
17 is one of my data points, there's [REDACTED] people
18 in the sample. And then, in fall of 2009,
19 there is [REDACTED].

20 Q And in spring of 2010, there is
21 [REDACTED]?

22 A Yes.

1 Q And this is the only data you have
2 to suggest that Tennis Channel viewers are
3 less affluent from a different socioeconomic
4 demographic than Golf and Versus viewers,
5 correct?

6 A No.

7 Q What else do you have?

8 A This data is compelling on its
9 own. Secondly, I mentioned to you that the
10 record includes testimony from one of your
11 witnesses that Simmons produced income data
12 showing the audience to be less affluent than
13 it had been. So it's a second data point.

14 Third, I think in my report I talk
15 about some index ratings referencing broadcast
16 coverage of tennis and golf and some of the
17 other sports. And although it is not Tennis
18 Channel, it seems to be indicative that those
19 sports -- I think it was college football and
20 golf -- index at a higher rate than for Tennis
21 Channel -- for tennis programming on broadcast
22 television.

1 Q Since you raised tennis generally,
2 let me show you one more exhibit on this
3 topic. Have you looked at what Comcast says
4 when they sell advertising about the value of
5 tennis and the affluence of tennis viewers?

6 A I have seen -- I think I have seen
7 a pitch piece from Spotlight.

8 Q Okay.

9 JUDGE SIPPEL: From where?

10 THE WITNESS: Comcast Spotlight,
11 which is the -- a separate division that sells
12 advertising --

13 JUDGE SIPPEL: Okay.

14 THE WITNESS: -- for Comcast
15 Cable.

16 JUDGE SIPPEL: Thank you. Okay.

17 MR. SCHMIDT: I think that's what
18 I have here. May I approach, Your Honor?

19 JUDGE SIPPEL: Yes, you may.

20 MR. SCHMIDT: This is --

21 JUDGE SIPPEL: Are we finished
22 with this?

1 MR. SCHMIDT: We are finished with
2 that. This is a new exhibit, Exhibit 315.

3 JUDGE SIPPEL: Tennis 315.

4 (Whereupon, the above-referred to
5 document was marked as Tennis
6 Channel Exhibit No. 315 for
7 identification.)

8 BY MR. SCHMIDT:

9 Q Is this the pitch piece you saw?

10 A I don't think it is.

11 Q Okay. I think the one you saw is
12 no longer on the Comcast website. This is the
13 current version.

14 MR. TOSCANO: Are you representing
15 this is on the Comcast website? Because
16 that's not what it indicates.

17 MR. SCHMIDT: Then I won't make
18 that representation.

19 MR. TOSCANO: This looks like a
20 reseller test.

21 MR. SCHMIDT: I don't know where
22 this is, but it's a Comcast Spotlight

1 document. I don't think they're disputed. If
2 you want to dispute the authenticity of it, we
3 can take that up.

4 MR. TOSCANO: I --

5 MR. SCHMIDT: My understanding is
6 if you go to Comcast, this is what it links up
7 to. But we can confer on that.

8 JUDGE SIPPEL: Well, how did you
9 get it?

10 MR. SCHMIDT: I'm being told that
11 we went to the Comcast website and it linked
12 up to this.

13 MR. TOSCANO: And I'm simply
14 pointing out if you look on the document
15 itself, it's not from the Comcast website.

16 JUDGE SIPPEL: Is there a -- I'm
17 sorry. Where is it from?

18 MR. TOSCANO: I've never seen the
19 document before.

20 JUDGE SIPPEL: Dreamhosters.com?
21 Is that what it's about?

22 MR. SCHMIDT: That's the hosting

1 website, but we found this by Googling Comcast
2 Spotlight. And unless this is someone
3 pretending to be Comcast Spotlight, this is
4 what I understand to be Comcast Spotlight.

5 MR. CARROLL: Isn't this a link?
6 Aren't you telling us that when you go to
7 Comcast Spotlight it links out to this web
8 page?

9 MR. SCHMIDT: From Comcast
10 Spotlight.

11 MR. TOSCANO: Well, in the
12 interest of getting this done, we have no
13 objection to proceeding with this, subject to
14 figuring out what it is completely I guess,
15 Your Honor.

16 JUDGE SIPPEL: All right. Well,
17 it's subject to its -- right, to its
18 authenticity or confirming authenticity.
19 Let's go forward.

20 BY MR. SCHMIDT:

21 Q Do you see where it says Comcast
22 Spotlight? I'm sorry. "Tennis is the

1 fastest-growing sport in America among
2 individual traditional sports, with an
3 increase in participation of ■ percent from
4 2000 to 2008"? Did I read that correctly?

5 A Yes.

6 Q "Comcast Spotlight can set you up
7 with a competitive advantage when targeting
8 this growing fan base of upscale viewers." Do
9 you disagree with any of that?

10 A Do I disagree with any of that? I
11 don't disagree with the fact that it's printed
12 on this website. We don't know where it's
13 coming from. The implication is that it's a
14 pitch piece from an organization trying to
15 sell advertising. So with all those caveats,
16 I agree that that's what it says.

17 Q That's not my question, sir. My
18 question is: do you agree that tennis has
19 upscale viewers, as we have seen in this
20 document and in other Comcast documents?

21 A I don't know that tennis has
22 upscale viewers. I haven't seen that

1 evidence. I have seen evidence that Tennis
 2 Channel -- all right, not tennis, but Tennis
 3 Channel does not have upscale viewers, okay?
 4 I haven't looked at what ESPN2's audience is
 5 and what tennis is on other channels. So I'm
 6 simply trying to be exact in my response to
 7 you. I don't know.

8 Q Are you finished, sir? Have we
 9 seen today -- and I'm really trying to get us
 10 through without going back to these documents
 11 -- documents where Comcast itself refers to
 12 tennis viewers as upscale? Yes or no.

13 A Comcast --

14 Q Yes or no, sir.

15 A -- has a separate division than
 16 the Content Division -- is selling
 17 advertising, and they seem to be pitching the
 18 grand slam carriage on ESPN2 as upscale.

19 Q Let's go back to my question.
 20 Have we seen Comcast documents, other than
 21 this, where Comcast describes tennis viewers
 22 as upscale?

1 A Oh, we saw -- I think we saw it so
2 long ago now that I'm going to draw a blank.
3 But I think in this stack we have some Versus
4 documents that refer to the upscale nature of
5 the U.S. Open.

6 Q And you did not disagree with
7 those, correct?

8 A I told you -- I think I told you
9 -- that I don't know what the audience is, if
10 it's an upscale audience. I don't disagree.

11 JUDGE SIPPEL: If you're looking
12 for an expert opinion from this witness,
13 you're not going to get it.

14 MR. SCHMIDT: Well, I think that's
15 right, and I'll move on with that
16 understanding.

17 JUDGE SIPPEL: I mean, on this
18 point.

19 MR. SCHMIDT: Yes, I think that's
20 right.

21 JUDGE SIPPEL: Upscale.

22 BY MR. SCHMIDT: